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6   UNITED STATES DISTRICT COURT

7   EASTERN DISTRICT OF CALIFORNIA

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9   TROY MAGARRELL,

10   Plaintiff,   NO. CIV. S-04-2634 LKK/DAD
        v.

11
                                    ORDER
12 P. MANGIS, M.D., *S*.M. ROCHE,
    M.D., and RICHARD SANDHAM, M.D.,

13
            Defendants.
14 _____/

15   On July 2, 2010, this court issued a tentative pretrial order

16 in the above-captioned matter.   (Dkt. No. 121).   This order

17 included, among other things, statements of disputed and undisputed

18 facts.   Defendants now object to many facts included in both

19 statements. Defendants' objections are particular to the various

20 facts, arguing that specific facts are irrelevant, without

21 evidentiary support, incomplete, or poorly worded.

22   Plaintiff has filed a response.   Plaintiff disputes many of

23 defendants' particular arguments.   Plaintiff further argues that,

24 insofar as defendants previously agreed to these facts and the

25 phrasing thereof, defendants should not now be permitted to object

26 to these statements.   Although there is an element of fairness to

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1 plaintiff's broader argument, the court invited such objection at

2 the pretrial conference.

3   In general, defendants' objections fall into three categories.

4 One, defendants argue that various facts are irrelevant. Arguments

5 concerning relevance may be presented in motions in limine. To the

6 extent that these objections are overruled, if the underlying fact

7 is undisputed, it will be presented to the jury as such.

8   Two, defendants argue that certain facts are without

9 evidentiary support. While defendants' failure to raise this

10 objection previously is troubling, and the court agrees that

11 plaintiff has provided some evidence supporting these facts, the

12 court cannot rule on the sufficiency of this evidence here. To the

13 extent that defendants demonstrate that these facts are disputed,

14 the court will treat them as such. Where defendants have simply

15 tacked the word "disputed" onto a relevance objection, however,

16 defendants have not demonstrated a dispute. The court further

17 cautions defendants that, to the extent that defendants have

18 reversed position and now insist that certain facts are disputed,

19 if such disputes are proven to be non-existent or frivolous at

20 trial, the court will impose sanctions.

21   Three, for some facts, defendants do not dispute the fact

22 itself, but seek to add additional facts to the statement. Insofar

23 as plaintiffs dispute this additional information, these requests

24 are denied.

25   These three arguments have no application to the statement of

26 disputed facts. Accordingly, defendants' objections thereto are

1 denied, except insofar as plaintiffs agree to defendants' proposed

2 modifications.

3   Guided by these principles, the court turns to the objections

4 to specific facts:

5 **A.**   **Undisputed Facts:**

6   **No. 2:** overruled

7   **No. 3:** this fact will be moved to the disputed facts section

8   **No. 4:** the court substitutes the word "claimed" for "believed"

9   **No. 7:** overruled

10   **No. 8:** plaintiff agrees to this modification

11   **No. 10:** overruled

12   **No. 11:** plaintiff agrees

13   **No. 12:** overruled

14   **No. 13:** overruled

15   **No. 14:** overruled

16   **No. 17:** overruled

17   **No. 18:** overruled

18   **No. 20:** the court omits the language which defendants contend

19 is without evidentiary support. The court otherwise overrules this

20 objection.

21   **No. 21:** Per plaintiffs' response to defendants' objection,

22 this fact is withdrawn.

23   **No. 22:** overruled

24   **No. 23:** overruled

25   **No. 24:** Per plaintiffs' response, this fact is withdrawn.
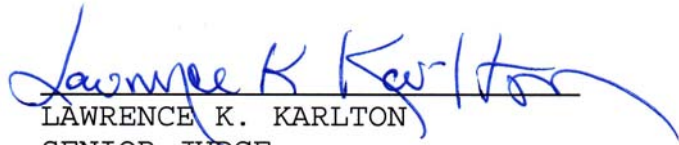
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B.   Disputed Facts:

As noted above, the court generally overrules these objections. Plaintiff has agreed to withdraw number 7, and to modify facts 8, 9, 10 and 11.

<div align="center">

Conclusion

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For the reasons stated above, Defendants' objections are overruled in part. The court will concurrently file a final pretrial order reflecting the above modifications.

IT IS SO ORDERED.

DATED: July 27, 2010.

LAWRENCE K. KARLTON
SENIOR JUDGE
UNITED STATES DISTRICT COURT